

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|-------------------------------------|-------------------------------------|--|------------------------------------|---------------------------------|
| Investigator: Olga Bentin | Team: Squad #4 | CCRB Case #: 201709270 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Thursday, 07/28/2016 11:09 PM | Location of Incident: § 87(2)(b) | Precinct: 44 | 18 Mo. SOL 1/28/2018 | EO SOL 1/28/2018 | |
| Date/Time CV Reported Mon, 11/06/2017 10:55 AM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Mon, 11/06/2017 10:55 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------|--------|--------|---------|
| 1. POM Sean Kelly | 22679 | 959727 | 044 PCT |
| 2. SGT Bolue Hui | 03714 | 945833 | 068 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------|-----------|--------|----------|
| 1. POF Ofelia Mero | 06897 | 954131 | 044 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------|--|-----------------------------|
| A.POM Sean Kelly | Abuse: Police Officer Sean Kelly entered § 87(2)(b) § 87(2)(b) in the Bronx. | § 87(2)(b) |
| B.SGT Bolue Hui | Abuse: Sergeant Bolue Hui entered § 87(2)(b) § 87(2)(b) in the Bronx. | § 87(2)(b) |
| C.POM Sean Kelly | Force: Police Officer Sean Kelly used physical force against § 87(2)(b) | § 87(2)(b) |

Case Summary

On November 6, 2017, § 87(2)(b) filed this complaint with the 311 Customer Service Center by email. On November 6, 2017, this complaint was received at the CCRB. Due to the late filing, the statute of limitations for this case expired on January 29, 2018.

On July 28, 2016, at approximately 11 p.m., two uniformed officers, identified by the investigation as PO Sean Kelly and Sgt. Bolue Hui of the 44th Precinct, entered § 87(2)(b)'s apartment and arrested him (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). While effecting an arrest, an officer, identified by the investigation as PO Kelly, punched § 87(2)(b) in his stomach (**Allegation C: Force**, § 87(2)(g)).

As a result of this incident, § 87(2)(b) was arrested for an assault in the second degree (BR 06). There is no video footage for this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Sean Kelly entered § 87(2)(b) in the Bronx.

Allegation (B) Abuse of Authority: Sergeant Bolue Hui entered § 87(2)(b) in the Bronx.

Allegation (C) Force: Police Officer Sean Kelly used physical force against § 87(2)(b)

§ 87(2)(g)
§ 87(2)(b) (BR 01, BR 12, and BR 19) stated that on July 29, 2016, at approximately 12:01 a.m. (the investigation determined the incident occurred on July 28, 2016, at approximately 11 p.m.) he got into a physical altercation with his neighbor, § 87(2)(b). According to § 87(2)(b), § 87(2)(b) repeatedly punched him, and § 87(2)(b) did not fight back. As a result of these punches, § 87(2)(b) sustained swelling to his face. § 87(2)(b) denied that he was intoxicated at the time of the assault and denied injuring § 87(2)(b) in any way.

After the assault, § 87(2)(b) and § 87(2)(b) both went to the lobby and spoke to the building's security guards about their physical altercation. § 87(2)(b) showed the guard a bleeding cut under her right eye. § 87(2)(b) denied causing it. § 87(2)(b) then went upstairs to his apartment.

Approximately 20 minutes later, § 87(2)(b) heard a knock on his front door. When § 87(2)(b) opened the door, he saw two uniformed officers, PO Kelly and St. Hui, standing outside. PO Kelly asked § 87(2)(b) "Are you § 87(2)(b) to which § 87(2)(b) replied, "Yes." PO Kelly and Sgt. Hui then grabbed § 87(2)(b) by his arms and pulled him out of the apartment. § 87(2)(b) was not sure if PO Kelly or Sgt. Hui crossed the threshold of the door to remove him.

While standing outside of the apartment, PO Kelly saw that § 87(2)(b) had a sign on his front door indicating that he was an army veteran. PO Kelly asked § 87(2)(b) if he was a soldier, and § 87(2)(b) said, "Yes." PO Kelly replied to § 87(2)(b) "Thank you for your services," and then punched § 87(2)(b) one time in his stomach with his fist. § 87(2)(b) did not resist PO Kelly or Sgt. Hui in any manner. § 87(2)(b) did not sustain any injuries as a result, but complained that it was painful.

After § 87(2)(b) was brought to the 44th Precinct stationhouse, he began to bleed from his nose. § 87(2)(b) did not know what caused him to bleed. The FDNY ambulance was called for § 87(2)(b) and he was taken to § 87(2)(b). While in the hospital, § 87(2)(b) was examined by the doctor and an ice pack was applied to his face because it was swollen as a result being punched by § 87(2)(b).

§ 87(2)(b) filed this complaint roughly 15 months after this incident because he wanted to wait for the criminal case against him stemming from this incident to end.

The ACR (BR 03) notes that EMS responded to the 44th Precinct stationhouse at approximately 1:10 a.m., on July 29, 2016, to aid a sick prisoner. § 87(2)(b) told EMS that he was assaulted by a female few hours earlier and that he was experiencing pain to his face. EMS noted that § 87(2)(b) had swelling to his lip and both cheeks. § 87(2)(b) denied loss of consciousness, neck, back, or chest pain. § 87(2)(b) was then transported to the Emergency Room at § 87(2)(b) in the Bronx.

It is noted in § 87(2)(b)'s medical records (BR 02) from § 87(2)(b) that he was escorted to the Emergency Room by PO Brian Breitfeller. § 87(2)(b) told the medical personnel that he had a fight with his neighbor from upstairs, stating, "Some girl beat me up," after he complained to the security guard that she was noisy. § 87(2)(b) complained of left facial pain and swelling to his lip. § 87(2)(b) was given advice to stay in the Emergency Room for treatment related to hyperkalemia and hyperglycemia. § 87(2)(b) became aggravated and refused further treatment, and was discharged shortly after. Besides complaints of facial pain and swelling of the lip, § 87(2)(b)'s medical records do not note any injuries or other complaints of pain.

No Medical Treatment of Prisoner Form (BR 04) was found regarding this incident.

The Prime Protective Bureau, a security company that staffs § 87(2)(b)'s building, was uncooperative with the investigation in providing information regarding the security guards who were on duty at § 87(2)(b) the time of the incident (BR 18).

In the initial 311 complaint (BR 19), § 87(2)(b) provided name of one of the officers who arrested him as "PO Mero," whom he described as a white male from the 44th Precinct stationhouse. § 87(2)(b) described the officer who punched him only as a white male whose name he did not know. The CTS Officer Identification search for "PO Mero" revealed that there is only one officer with the corresponding name, PO Ofelia Mero, assigned to the 44th Precinct, but she is a female. The CTS Officer Identification search also revealed that there is another officer with a similar name, PO Wagnel Meran, who according to his NYPD Photograph (BR 14) is a § 87(2)(b). According to PO Meran's memo book (BR 20), he was on vacation between July 26, 2016 and July 30, 2016.

During the telephone statement (BR 13), § 87(2)(b) described the subject officer who punched in the stomach as a white male, in his late 30s, approximately 5'8" or 5'9" tall, with dark or black hair, and dressed in uniform. § 87(2)(b) described the other officer only as a white male.

During the CCRB interview (BR 01), § 87(2)(b) described the subject officer who punched him as a white male, approximately 5'6" tall, in his 30s or 40s, approximately 130 or 140 pounds, with black hair, and dressed in uniform. § 87(2)(b) described the other officer as a light skinned Hispanic male, approximately 6' tall, in his 30s or 40s, with dark hair, and dressed in uniform.

PO Kelly (BR 05) acknowledged responding to § 87(2)(b) and arresting § 87(2)(b) but denied entering § 87(2)(b)'s apartment or using any force against him. According to PO Kelly's NYPD Photograph (BR 15), § 87(2)(b)

PO Kelly did not independently remember with whom he worked on the incident date, but his memo book (BR 22) reflects that he worked with Sgt. Hui.

Sgt. Hui (BR 07) also acknowledged responding to § 87(2)(b) with PO Kelly, but did not remember § 87(2)(b) or interacting with him. Sgt. Hui denied entering § 87(2)(b)'s

apartment or using any force against him. According to Sgt. Hui's NYPD Photograph (BR 21) § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) provided vague and various descriptions of the subject officer who used force against him, but PO Kelly was the only white male officer who acknowledged participating in § 87(2)(b)'s arrest. § 87(2)(g)

PO Kelly (BR 05) stated that on July 28, 2017, at approximately 11 p.m., he and his partner, Sgt. Hui, responded to § 87(2)(b) in the Bronx regarding a radio call about a female being assaulted at the location. PO Kelly did not remember what additional information was provided to him over the radio regarding that job.

PO Kelly then went and spoke to § 87(2)(b) who informed him that she had an argument with the male, later identified as § 87(2)(b) which led to the elevator where § 87(2)(b) assaulted her with the key ring. PO Kelly observed a laceration to the left side of her face. PO Kelly did not remember where the conversation with § 87(2)(b) took place.

After speaking to § 87(2)(b) PO Kelly located § 87(2)(b) and arrested him inside of § 87(2)(b). PO Kelly did not remember where exactly § 87(2)(b) was when he arrested him. § 87(2)(b) was calm. While at the scene, PO Kelly spoke to § 87(2)(b) but did not remember what their conversation was about, where it took place, or what statements were made by § 87(2)(b). PO Kelly did not remember if the building security guard was present at the time of § 87(2)(b)'s arrest. PO Kelly did not remember if he went to § 87(2)(b)'s apartment, but denied entering it during this incident, nor did he see any other officer do so. PO Kelly did not recall if he grabbed § 87(2)(b) or pulled him out of the apartment while effecting an arrest, nor did he remember seeing any other officer do so. PO Kelly denied § 87(2)(b) resisting him at any point during the incident. PO Kelly denied punching § 87(2)(b) in his stomach nor did he see any other officer do so. At some point, § 87(2)(b) positively identified § 87(2)(b) as her assailant.

The arrest report (BR 06) completed by PO Kelly is consistent with his testimony. It is also noted in the report that no force was used against § 87(2)(b) to effect an arrest.

Requests for an AIDED for § 87(2)(b) and any TRI reports relating to this incident were returned with negative results (BR 25).

Sgt. Hui (BR 07) did not recall any specific detail of this incident. Sgt. Hui did remember that on July 28, 2016, at 10:52 p.m., he and PO Kelly responded to assault in progress at § 87(2)(b) in the Bronx. Upon arrival, Sgt. Hui spoke to the security guard in the lobby of the building. Sgt. Hui could not provide any specific details of their conversation, nor was he able to describe or identify the guard. Sgt. Hui did not remember if any additional officers responded to the location.

Sgt. Hui did not remember where § 87(2)(b) was apprehended, but denied entering his apartment, nor did he see PO Kelly do so. Sgt. Hui denied punching § 87(2)(b) in his stomach, nor did he see PO Kelly do so.

The police did not violate a defendant's Fourth Amendment rights when they reached in and pulled him out as he stood in close proximity to his doorway. People v. Ashcroft, 33 A.D.3d 429 (2006) (BR 23) A warrantless arrest of a suspect in the threshold of a residence is permissible under the Fourth Amendment, provided that the suspect has voluntarily answered the door and police have not crossed the threshold. People v. Garvin, 30 N.Y.3d 174 (2017) (BR 24)

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (BR 09)
- PO Sean Kelly has been a member of service for two years and has no previous CCRB history.
- Sgt. Bolue Hui has been a member of service for 10 years and has two CCRB allegations stemming from one complaint that was made against him § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s arrest.
- As of December 4, 2017, no Notice of Claim has been filed regarding this incident (BR 10).
- § 87(2)(b), § 87(2)(c)

Squad No.: 4

Investigator: _____

| | | |
|-----------|--------------------|------|
| Signature | Print Title & Name | Date |
|-----------|--------------------|------|

Squad Leader: _____

| | | |
|-----------|--------------------|------|
| Signature | Print Title & Name | Date |
|-----------|--------------------|------|

Reviewer: _____

| | | |
|-----------|--------------------|------|
| Signature | Print Title & Name | Date |
|-----------|--------------------|------|